

УДК 343.197 (664)

The Politics of Wartime Rape Prosecutions in Sierra Leone Special Court

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Received 15.10.2012, received in revised form 06.06.2013, accepted 10.09.2013

Out of all quasi-international tribunals established in the 1990-2000 by the international community the Sierra Leone Special Court stands out when it comes to prosecution of rape and sexual crimes committed during the civil war in the country. The court, which combines both international and national elements, was established by the United Nations upon request from the Sierra Leonean government in 2002. The article looks at the background surrounding the establishment of the tribunal as well as factors that enabled prosecution of wartime rape and sexual assaults within that tribunal.

Keywords: wartime rape, international criminal tribunals, Sierra Leone Special Court.

Background: wartime rape in the Sierra Leonean context

The nine-year civil war in Sierra Leone was fought between the Sierra Leone Army and the government-aligned Civil Defense Force against Revolutionary United Front (RUF), which aimed to overthrow the government. RUF was notorious for its atrocities committed against civilian population, including rape, mutilations and the kidnapping of children. On 7 July 1999, the Lomé Peace Agreement officially ended the war by offering amnesty to RUF and a power-sharing arrangement with the rebels. In the period 1991-1999, between 1 to 2 million people became refugees, 50 000 died, 5000-10 000 became amputees, 5000-10 000 were raped and 10 000 children were forcibly recruited to fight (Beigbeder, 2002:179). Physicians for Human Rights conducted a survey on the issue of sexual

violence, and found that 89 % of the respondents (in four locales) reported to have been raped, 33 %-gang raped. Most of the victims were raped by RUF soldiers. Rape was often accompanied by mutilations or sexual slavery. The level of pregnancy was high. Women believed to have been virgins were specifically targeted for abuse. Sexual violence against men was also widespread (Amowitz, 2002: 513-521). The Human Rights Watch report also highlighted that women were often abducted by the rebels, virgins were often singled out, though not necessarily.¹

It has to be noted that the Sierra Leone conflict (and rape, in particular) did not receive much international coverage. According to B. Nowrojee, “throughout the decade of conflict, most journalists paid little or no attention (and subsequently failed to publicize) the widespread and ongoing attacks directed against women and

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girls. Sexual violence was Sierra Leone's invisible war crime" (Nowrojee, 2005: 87). Unlike the conflicts in Yugoslavia and Rwanda, the conflict in Sierra Leone never involved the targeting of a specific group (which is why it was impossible to agree on the inclusion of genocide within the subject-matter jurisdiction). However, because of images of amputations and mutilations during "Operation No Living Thing" undertaken by paramilitaries and later on, the violations of the Lomé Peace Accords that talk of involvement in the conflict began in the Security Council (Fritz and Smith, 2001: 394).

In June 1998, the UN Observer Mission was established in Sierra Leone by the Security Council. The UNOMSIL team, in cooperation with the ECOMOG (Military Observer Group of the Economic Community of West African States) began investigations into human rights abuses.

The fighting and atrocities did not stop with the signing of Lomé Peace Agreement, however. They continued into 2000 and 2001. The continuation of atrocities challenged the legitimacy of the amnesty, and Sierra Leone government accordingly requested the United Nations to create a special tribunal. The President of Sierra Leone, Ahmad Tejan Kabbah, in his letter to the United Nations asked assistance in bringing to justice those responsible for the atrocities committed during the country's civil war. The country had no resources to initiate criminal investigations, but it had a strong determination to do so.

Establishing the Special Court for Sierra Leone

Security Council Resolution 1315 (August 14, 2000) called on the Secretary-General to start negotiations with Sierra Leone on the issue of creating the Court. A formal agreement on the project was reached in January 2002 in Freetown.

The Court became operational in July 2002. The Parliament of the country ratified the agreement and enacted implementing legislation.

The question may be posed as to why a quasi-international tribunal, rather than a truly international one, was established. One of the reasons might be a lack of political support for creating another expensive international tribunal (the so-called "Tribunal fatigue" of the Security Council). Establishment of the court was the result of joint efforts by the Security Council and the government of Sierra Leone. In accounting for Sierra Leone's interests in creating the tribunal, one has to consider the issue of amnesty granted by Lomé Agreement signed on 8 July 1999. Security Council passed a resolution on 20 August 1999, in which it welcomed the signing of the peace agreement, even though it meant impunity for human rights violators. The UN Secretary General's special representative to Sierra Leone objected to the validity of amnesty, arguing that those who committed war crimes, crimes against humanity or genocide shouldn't be granted amnesty (McDonald, 2002: 123). Combatants of the Revolutionary United Front (RUF) failed to observe the peace agreement provisions and continued to attack civilians. In May 2000, they captured 500 UN peace-keepers. On 14 August 2000, the Security Council passed Resolution 1315 (2000), which called for bringing criminals to justice, in the light of "very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity."² With the government calling for the establishment of a tribunal (which already held some suspects in custody) and the U.S. and the U.K. expressing their support for prosecutions, the plan for a hybrid tribunal came into being.

The date of 30 November 1996 was selected as the beginning of *rationae temporis* jurisdiction

(to begin at the outbreak of hostilities in 1991 was deemed to have been too heavy a burden on the Court). On 30 November 1996, the parties sought a peaceful settlement of the conflict. In any case, the period from 1996 was believed to encompass the most serious crimes. One of the three trial judges and two of the five appeal judges were appointed by the Sierra Leone government.

Subject-matter jurisdiction was a combination of crimes prohibited both internationally and nationally. They included crimes against humanity, violations of common Article 3 of the Geneva Conventions and Additional Protocol II, as well as crimes against peace-keepers and the recruitment of children. Sexual offenses against 13-14 year-old girls were included as part of domestic law.³ In general, the Court was designed to prosecute only those who “bear greater responsibility for war crimes and crimes against humanity.” Genocide was not included in the subject-matter jurisdiction, since there was no consensus that crimes committed in the course of the conflict amounted to genocide.⁴ Generally, the Statute extends the ICTY and ICTR reference to rape as a crime against humanity by explicitly including other categories of crime, such as forced pregnancy, sexual slavery, enforced prostitution and other forms of sexual assault.⁵ The Statute also calls for an appointment of staff with experience in gender-related crimes (Article 15.4). Rules of procedure and evidence contain witness-friendly provisions (related to consent, for instance).⁶ In general, there has been a number of problems outlined by scholars, which could impede effective prosecution of rape and sexual violence, such as no express provision prohibiting the questioning of prior or subsequent sexual conduct of the victim.

The first indictments, issued on 7 March 2003, were followed by a number of arrests. Despite fears that the difficulties in the Statute might impede investigations and prosecutions

of rape, out of 13 original indictments, 10 contained charges of rape (it is worth noting that these charges were included in the indictments from the beginning, rather than later, by way of amending an indictment, as was the case in the ICTR)⁷ Ten of the accused were apprehended. One of the indictments was issued against Charles Taylor, then the President of Liberia (charging him, *inter alia*, with rape), but Taylor obtained asylum in Nigeria in August 2003.⁸ Ex-corporal Foday Sankoh, leader of the RUF died in custody, Sam Bockarie was reported dead in Liberia and Johnny Paul Koroma went into hiding.

The first trials began in June 2004. One of the defendants was Sam Hinga Norman, the deputy defense minister, a controversial figure with considerable popularity.

The defendants were charged with war crimes, crimes against humanity and violations of international humanitarian law, including murder, rape, looting, burning, attacks on peace-keepers, and so on. OTP’s Investigation Section was charged with collecting information.

The number of indictments containing rape and sexual violence is quite striking. It has to be born in mind that the Court has a limited time frame and limited resources (it has to complete the trials by the end of 2006 and is financed by voluntary contributions). Given these time constraints, the Chief Prosecutor has to make strategic choices as to what indictments to file. The Prosecutor’s office *was* willing to include rape and sexual violence among the charges. The role of David Crane, the former Chief Prosecutor, is often emphasized: “The original Chief Prosecutor, David M. Crane, was very active in bringing charges on crimes of rape, sexual slavery and – a new count under “other inhumane acts” – forced marriage.”⁹ Crane has made a considerable effort to investigate and prosecute for sexual violence. He “spearheaded a prosecution strategy that incorporated sexual violence crimes

from the outset, which was consistently followed by the staff on a daily basis. The work of the Special Court has repeatedly demonstrated that, even with extreme constraints, the political will of the prosecutor and his senior staff can shift the balance toward justice for victims of sexual crimes” (Nowrojee, 2005: 99).¹⁰ Crane appointed experienced female investigators to deal with this kind of crime. Chief of Prosecutions, Luc Cote, “followed through to ensure inclusion of this evidence in the courtroom and has dedicated a trial attorney to the prosecution plan for the sexual violence crimes” (Nowrojee, 2005 : 100).

The role of non-judicial mechanisms in addressing wartime rape and sexual violence

A Truth Commission was established by Sierra Leone Parliament at approximately the same time and was operating parallel to the Court.¹¹ The UN High Commissioner on Human Rights provided substantial assistance to the government in drafting the Truth and Reconciliation Commission Act in 2000. The Commission itself was housed as a project of the UN Office of the High Commissioner for Human Rights in Geneva. One of the most controversial aspects of the Sierra Leone Special Court was the prosecution of minors. In the course of the conflict, a large number of atrocities were committed by child soldiers, who themselves had been abducted, forced to take drugs and induced to commit crimes. An important issue was how to reintegrate child offenders into society. Thus, the Security Council noted that, “the Truth and Reconciliation Commission will have a major role to play in the case of juvenile offenders, and the members of the Security Council encourage the Government of Sierra Leone and the United Nations to develop suitable institutions, including specific provisions, related to children, to this end” [UN Doc.S/2000/1234]. The Truth and

Reconciliation Commission became an important actor in addressing crimes committed by children. This non-judicial mechanism was also crucial in hearing testimonies from victims (if the victim agreed to give a deposition). Since the Court was designed to prosecute only high-ranking officials, the Truth Commission provided the opportunity for the victims to come forward with their stories. Priscilla Hayner in the ICTJ report notes that a significant number of perpetrators came forward to the Truth Commission, “more than 13 percent of the 8000 individual statements are directly from the perpetrators, and approximately a third of those who appeared in the hearings admitted to their own wrongs, often in front of the TRC during its initial hearings, but after seeing that there was no reaction from the Special Court for those that did testify, many clamored for the opportunity to speak” [ICTJ: 4]. The Sierra Leonean TC “developed a methodology to uncover accounts of sexual violence. The Commission decided that women should make their statements to women statement-takers trained to deal with accounts involving rape and sexual violence. In addition, Commissioners and staff held public ‘town hall’ meetings and reached out to many women’s groups and agencies dealing with women, educating them about the goals of the TRC. The Commissioners also accepted suggestions and aid from these organizations.”¹²

National and international NGOs cooperated with the government, the Truth Commission and the Special Court. They organized marches demonstrating solidarity with rape victims. Women’s organizations were frequently contacted by the Truth Commission to encourage them to participate in the hearings. The Ministry of Social Welfare, Gender and Children’s Affairs, as well as policewomen from Family Support Units also attended the hearings. Trainings for women’s organizations were often held by UNIFEM. One of the Organizations actively working in Sierra

Leone was Physicians for Human Rights. They collected evidence of abuses and provided direct help to survivors. Human Rights Watch was also involved in documenting abuses. Workshops on gender crimes have been held by the Court, with the participation of Sierra Leonean women's groups. "The Outreach Section has liaised with a broad range of Civil Society groups, including a number of women's groups, prominent Sierra Leonean women, and so on."¹³ Sierra Leone Special Court sought not only to investigate and prosecute these crimes, but also to expand the scope of international humanitarian law to include "forced marriage" as a crime against humanity.¹⁴

Conclusion

To date, out of the four quasi-international tribunals, the Sierra Leone Special Court, although criticized for its use of selective justice (it was meant to prosecute only senior officials),

seems to have been the most effective. It was able to bring to trial a number of important defendants. Efforts were also made to disseminate information about the proceedings to the public, there were no apparent financial complications. A reason for the comparative success in serving justice is, first of all, the government's willingness to cooperate with the Court and, importantly, international support-particularly that of the United States--in providing financial help and professionals. Commitment on the part of the Prosecutor and his office (as well as the Truth Commission staff) was instrumental in making sure that rape and sexual violence were recognized as one of the most serious crimes committed in the conflict. "The work of the Special Court has repeatedly demonstrated that, even with extreme constraints, the political will of the Prosecutor and his senior staff can shift the balance toward justice for victims of sexual crimes" (Nowrojee, 2005: 99).

¹ "We'll Kill You if You Cry". Sexual Violence in the Sierra Leonean Conflict. Human Rights Watch. January 2003. Available at: <http://www.hrw.org/reports/2003/sierraleone/sierleon0103.pdf>.

² SC Res.1315 (2000). Available at: [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1315 %20\(2000\)&Lang=E&Area=UNDOC](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1315%20(2000)&Lang=E&Area=UNDOC).

³ Article 5 (crimes under Sierra Leonean law): "The Special Court shall have the power to prosecute the persons who have committed the following crimes under Sierra Leonean law : a. Offenses relating to the abuse of girls under the Prevention of Cruelty to Children Act 1926...i. Abusing a girl under 13 years of age, contrary to section 6 ; ii. Abusing a girl between 13 and 14 years of age, contrary to section 7 ; iii. Abduction of a girl for immoral purposes, contrary to section 12." Statute of the Special Court for Sierra Leone. Available at: [http://www.sc-sl.org/LinkClick.aspx?fileticket=uCln1MJeEw %3D&](http://www.sc-sl.org/LinkClick.aspx?fileticket=uCln1MJeEw%3D&).

⁴ Articles 2-5 of the Statute list the crimes that can be prosecuted. Article 2 covers crimes against humanity. Article 3 covers violations of Common Article 3 of the Geneva Conventions and Additional Protocol II (law applicable in an internal armed conflict). Article 4 lists "other serious violations of international humanitarian law", and Article 5-"crimes under Sierra Leonean law". *Ibid*.

⁵ See Article 2: "The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:...c. Enslavement...f. Torture; g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence; h. Persecution on political, racial, ethnic or religious groups; i. Other inhumane acts." Article 3: "The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of Article 3 common to the Geneva Conventions...and of Additional Protocol II...These violations shall include: a. Violence to life, health and physical and mental well-being of persons, in particular, murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment...c. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault...h. Threats to commit any of the foregoing acts." *Ibid*.

⁶ Rule 96 (i)-(iii). Available at: <http://www.sc-sl.org/DOCUMENTS/tabid/176/Default.aspx>.

⁷ See *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01 (Indictment), 3 March 2003; *Prosecutor v. Foday Saybana Sankoh*, Case No. SCSL-2003-02 (Indictment), 3 March 2003; *Prosecutor v. Johnny Paul Koroma*, Case No. SCSL-2003-03 (Indictment), 3 March 2003; *Prosecutor v. Sam Bocharie*, Case No.

SCSL-2003-04 (Indictment), 3 March 2003; *Prosecutor v. Issa Hassan Sesay*, Case No. SCSL-2004-15-PT (Indictment), 5 February 2004; *Prosecutor v. Alex Tamba Brima*, Case No. SCSL-2004-016-PT (Indictment), 5 February 2004; *Prosecutor v. Morris Kallon*, Case No. SCSL-2004-15-PT (Indictment), 5 February 2004; *Prosecutor v. Augustine Gbao*, Case No. SCSL-2004-15-PT (Indictment), 5 February 2004; *Prosecutor v. Brima Bazzy Kamara*, Case No. SCSL-2004-016-PT (Indictment), 5 February 2004; and *Prosecutor v. Santiago Borbor Kanu*, Case No. SCSL-1004-016-PT (Indictment), 5 February 2004. Available at: www.sc-sl.org. Shaoli Sarkar mentioned, for instance, that in the AFRC and RUF trials, “sexual violence formed a critical part of the charges against accused persons for both of these cases. Counts 6 through 9 of the amended indictments for the AFRC and RUF trials include charges of sexual violence. Of the 59 AFRC and 98 RUF witnesses, 11 AFRC and 16 RUF witnesses testified about an act of sexual violence inflicted upon their persons.” E-mail from Shaoli Sarkar, OTP, May 5, 2006. On file with the author.

⁸ Charles Taylor was apprehended and handed over to the Special Court on 29 March 2006 following pressure exercised on Nigeria by the U.S. government. Taylor made his first appearance before the Court on 3 April 2006, and pleaded not guilty to all the 11 counts of the indictment (which include war crimes, crimes against humanity, and other serious violations of international humanitarian law, including sexual slavery and mutilations). However, for fear that his trial might disrupt peace in the country, requests were made to try Taylor in the International Criminal Court in the Hague. For more, see, for example: Charles Taylor’s Initial Appearance // U.C.B. War Crimes Studies Center, Sierra Leone Trial Monitoring Project Special Report. April 3, 2006. Available at: http://socrates.berkeley.edu/~warcrime/documents/Taylor-Specialreport_001.pdf.

⁹ E-mail from a SLSC official, April 28, 2006. On file with the author.

¹⁰ The importance of the political will of the prosecutor and his staff was also mentioned by Patricia Sellers, gender advisor at the ICTY, who added that the Special Court staff had meetings with the ICTY team, and it was emphasized that crimes of rape and sexual violence should not be overlooked in the Special Court. Interview with Patricia Sellers. ICTY. May 3, 2006. On file with the author.

¹¹ The Truth Commission was established to promote reconciliation and was mandated to “pay special attention to the subject of sexual abuse.” The Truth and Reconciliation Commission Act (Sierra Leone). Available at: <http://www.sierra-leone.org/Laws/2000-4.pdf>. The TC functioned from mid-2002 until 2004. It produced its final report and recommendations in 2004.

¹² E-mail from Shaoli Sarkar, OTP. May 5, 2006. On file with the author.

¹³ E-mail from a SLSC official, April 28, 2006. On file with the author.

¹⁴ “The Prosecutor has creatively used the section of “other inhumane acts” under crimes against humanity—a seriousness to the enumerated crimes—to expand legal recognition for the types of sexual violence that women endure in conflict” (Nowrojee, 2005: 101). As noted above, the Statute itself is more expansive than those of the ICTY and the ICTR.

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Политические аспекты рассмотрения изнасилований в Специальном суде Сьерра-Леоне

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Девятилетняя гражданская война в Сьерра-Леоне велась между армией страны и проправительственными Гражданскими оборонными силами (Civil Defense Force) против Революционного объединенного фронта (Revolutionary United Front). Среди преступлений, совершенных в ходе конфликта, были изнасилования и насильственные действия сексуального характера, нередко сопровождавшиеся увечьями или сексуальным рабством. Военные столкновения и преступления не закончились с подписанием мирных соглашений в Ломе и продолжались в 2000 и 2001 годах. Таким образом, правительство страны приняло решение обратиться к ООН с просьбой создать специальный трибунал для осуществления правосудия над лицами, ответственными за преступления, совершенные во время гражданской войны. В статье рассматривается политика Специального суда Сьерра-Леоне в области уголовного преследования индивидов за совершение изнасилований в ходе вооруженного конфликта, так как несмотря на ограниченные временные рамки, ограниченные финансовые возможности и другие проблемы практического характера, Суд сумел разработать определенную стратегию рассмотрения данных преступлений.

Ключевые слова: Специальный суд Сьерра-Леоне, международные трибуналы, изнасилование.
